IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.152 OF 2003

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Market Creators Ltd. ...Petitioner

v/s.

Kanubhai Gandhi ...Respondent

...

Mr.B.H. Vyas for the Petitioner.

None for the Respondent.

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**CORAM: D.K.DESHMUKH, J.**

**DATED:** 19TH JANUARY,2005

**P.C.:**

1. By this Petition the Petitioner challenges the award made by the sole arbitrator dated 10-12-2002 directing the Petitioner to pay certain sum to the Respondent. The award was made on the basis of the claim made by the Respondent. The arbitration was made under the Bye-laws, Rules & Regulations of national Stock Exchange.

2. The learned counsel appearing for the Petitioner submits that the claim made by the Respondent before the arbitrator was barred by the law of limitation applicable to the arbitration under the Bye-laws, Rules & Regulations of the National Stock Exchange. He points out that all the claims which were made by the Respondent relate to the year 1996 and the last transaction was in January, 1997. The Petitioner, therefore, in his reply had claimed that the reference is barred by the law of limitation. The Respondent filed a rejoinder and so far as the question of limitation is concerned, he claimed that the law of limitation is not applicable and he stated that 100 of Cadbury and 100 shares of Core Parental

were withheld under the guise of matter being subjudice and therefore claim in relation to these two types of shares is not barred by law of limitation.

3. The arbitrator rejected the objection of the Petitioner for two reasons (i) that the Respondent was consistently corresponding with the Investors Grievance Cell of NSEIL and (ii) in criminal proceedings the Respondent was restrained from filing the arbitration proceeding.

4. The learned Counsel appearing for the Petitioner submits that none of the two reasons given by the arbitrator were even urged by the Respondent in so far as the objection as to limitation is concerned. It is submitted that it was not even the case of the Respondent that the time spent by him in corresponding with the Investors Grievance Cell is to be excluded. It is also submitted that it was nobody’s case that any criminal court had passed any order restraining the Respondent from filing the arbitration proceedings.

5. Though the matter appeared on board on several occasions none appeared for the Respondent, though served.

6. It appears from the claim statement that the transactions are of the year 1996 and the last transaction was in January, 1997. It is clear from the reply filed by the Petitioner that the claim of the Respondent was barred by the law of limitation. So far as limitation in relation to arbitration proceeding under Bye-laws, Rules and Regulations of National Stock Exchange is concerned, the limitation clause is Bye-law No.3 found in Chapter XI of the Bye-laws of the National Stock Exchange. It reads as under:-

> "All claims, differences or disputes referred to in Bye-Laws (1), (1A) and (1B) above shall be submitted to arbitration within six months from the date on which the claim, difference or dispute arose or shall be deemed to have arisen. The time taken in conciliation proceedings, if any, initiated and conducted as per the

> provisions of the Act and the time taken by the Relevant Authority to administratively resolve the claim, differences or disputes shall be excluded for the purpose of determining the period of six months."

Perusal of the above Bye-law shows that the reference to arbitration has to be made within a period of six months from the date on which the cause of action arose. It is further clear that the time that is taken in conciliation proceedings initiated under the Act and the time taken by administrative authority in resolving the dispute is to be excluded in computing the period of six months. When the Petitioner raised an objection regarding the claim being barred by the law of limitation, in the rejoinder the Respondent stated thus:-

> 3.Here the Law of Limitation is not applicable. However, M/s.MCL in their two letters (1) 100 shares of Cadbury and (2)

> 100 shares of Core Parental are withholding the scripts under guise of matter being subjudice and now the court cases have been cleared in our favour and; because of delaying the delivery of original script as mentioned in two letters (Annex VI & VIII), we are eligible for claim, and the amount becomes payable, because the circumstances developed due to delay in process at court level and hence, the point of discussing limitation law does not apply; as cause was court cases, which were cleared recently (we submit the news paper cutting of the Court Order in our favour for your perusal; which shows recent dates) (Annex XI (3))

It becomes clear from what has been quoted above that so far as the objection as to limitation is concerned (i) the case of the Respondent was that the law of limitation is not applicable and (ii) that the claim regarding two kinds of shares i.e. 100 shares of Cadbury and 100 shares of Core Parental, the matter was subjudice before the court.

The finding of the Arbitrator, however, on the issue of limitation is entirely different. In paragraph 6 of the award the arbitrator observes thus:

> "The preliminary objections by the Respondent vide letter dated 22nd July, 2002 is rejected on the grounds that the Applicant has been consistently corresponding with the Investors Grievance Cell of NSEIL. Moreover criminal proceedings initiated by the Respondent restrained the Applicant to file the Arbitration."

7. So far as the second reason given by the Arbitrator is concerned, firstly it is nobody's case that there was any restrain order passed by any criminal court restraining the Respondent from initiating arbitration proceeding. No such order has been produced on record. Therefore, the second reason given by the learned Arbitrator for holding that the reference is within limitation is nonexistent. So far as the first reason is concerned, from the rejoinder referred to above submitted by the Respondent it is clear that the

Respondent was not claiming any exclusion of time on the ground that he was pursuing his complaint before the Investors Grievance Cell. It is further to be seen here that according to Bye-law quoted above the time taken by the administrative authority for resolving the dispute is to be excluded. Therefore, before holding that the reference made is not barred by law of limitation because of exclusion of time, the arbitrator will have to give a date when the administrative proceedings were started as also the date on which the administrative proceedings were terminated, and it is only that period can be excluded for the purpose of calculating the period of six months provided in the Bye-laws. Perusal of the award, however, shows that the arbitrator has not applied his mind at all to this aspect of the matter and the finding that the reference is within limitation has been recorded by making a general observation that the Respondent was consistently corresponding with the Investors Grievance Cell. Thus, the finding recorded by the arbitrator for holding that the reference was made within a period of limitation provided by the Bye-laws is incapable of being sustained and therefore, it is liable to be set aside. If that finding is set aside, there is

no material produced by the Respondent on record which will show that the reference made by him was made within the period of limitation provided by the Bye-laws.

8. In this view of the matter, therefore, the award made by the arbitrator is liable to be set aside.

9. In the result, therefore, present petition succeeds and is allowed. The award made by the arbitrator is set aside. The Respondent is directed to pay costs of the petition as incurred by the Petitioner.

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